

RODNEY JAMES WALKER,

APPLICANT

v.

COMMISSIONER OF FINANCIAL

REGULATION

*

*

*

*

*

BEFORE MARY SHOCK,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE OF

ADMINISTRATIVE HEARINGS

OAH CASE No: DLR-CFR-76B-09-35394

*

*

*

*

*

*

*

*

*

*

*

PROPOSED DECISION

STATEMENT OF THE CASE

ISSUE

SUMMARY OF THE EVIDENCE

FINDINGS OF FACT

DISCUSSION

CONCLUSIONS OF LAW

RECOMMENDED ORDER

STATEMENT OF THE CASE

On August 7, 2009, the Maryland Commissioner of Financial Regulation (CFR), Department of Labor, Licensing and Regulation (Department), denied the Applicant's application for a mortgage originator's license. On August 21, 2009, the Applicant filed an appeal, after which the CFR referred the matter to the Office of Administrative Hearings (OAH) for a hearing. The CFR delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a recommended order.

I held a hearing on November 19, 2009, at the OAH in Hunt Valley, Maryland. Md. Code Ann., Fin. Inst. § 11-608 (Supp. 2009). Kris King, Assistant Attorney General, represented the CFR. The Applicant represented himself.

Procedure in this case is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009), OAH's Rules of Procedure, Code of Maryland Regulations (COMAR) 28.02.01, and the Rules of Procedure of the Department, COMAR 09.01.03.

ISSUE

Did the Department properly deny the Applicant's application for a mortgage originator's license?

SUMMARY OF THE EVIDENCE

Exhibits

The CFR submitted the following documents, which I admitted into evidence:

- CFR #1 Notice of Hearing, October 6, 2009
- CFR #2 Letter from CFR to OAH, September 8, 2009
- CFR #3 Request for Hearing, August 18, 2009, received August 21, 2009
- CFR #4 CFR denial letter to Applicant, August 7, 2009
- CFR #5 Application, June 12, 2009, with the following attachments:
 - a. U.S. Credit Profile Report, July 2, 2009
 - b. Letter from Applicant to CFR, July 6, 2009
 - c. Letter from Applicant to CFR, June 12, 2009
 - d. Criminal Justice Information System, Central Repository Printout, April 21, 2009
 - e. Certificate of Completion, Initial Mortgage Education Course, April 30, 2009
 - f. Employment Statement, May 5, 2009

The Applicant did not offer any exhibits for admission into evidence.

Testimony

The Applicant testified on his own behalf and offered the testimony of the following:

1. Carlos A. Green, Pastor, Calvary Christian Church
2. Carolyn Weaver-Green, Pastor, Calvary Christian Church

3. Wardell Wilson, Tuskegee Enterprises

The CFR did not call any witnesses.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. On or about June 12, 2009, the Applicant filed an application for a mortgage originator's license with the CFR. As part of the application process, the Applicant disclosed his criminal and credit history. (CFR #5).

2. The Applicant is fifty-one years old, born on September 17, 1958. (CFR #5-a).

3. In 1979 or 1980, the Applicant was convicted of theft of his employer, General Foods Corporation. He received probation and paid restitution. (CFR #5-c).

4. On April 30, 1987, in the Circuit Court for Baltimore City, the Applicant was found guilty of felony theft. (CFR #5-d). He had been employed by Sears Business Systems Center configuring computers. He stole \$21,000.00 worth of computers. The Court imposed a three-year suspended sentence and seven years supervised probation. It also ordered the Applicant to pay restitution.

5. The Applicant was found guilty of violating probation on January 24, 1989 and January 10, 1992. (CFR #5-d).

6. On July 5, 1994, the Applicant failed to appear for a violation of probation hearing and the Court issued a warrant. On March 31, 1999, the warrant was served on the Applicant. (CFR #5-d).

7. On May 11, 1999, the Circuit Court for Baltimore City found the Applicant guilty of violation of probation and sentenced him to three years confinement. The Applicant served eighteen months on work-release.

8. On May 24, 2007, in the District Court for Baltimore City, LVNV Funding, LLC, obtained a judgment against the Applicant for \$8,712.00. As of the date of the hearing, November 19, 2009, the judgment was unsatisfied. (CFR #5-a).

9. On March 23, 2009, in the District Court for Baltimore City, Nationwide Mutual Insurance Company obtained a judgment against the Applicant for \$1,696.00. As of the date of the hearing, November 19, 2009, the judgment was unsatisfied. (CFR #5-a). The judgment arose out of an automobile accident insurance claim. The Applicant has not paid the judgment because he contends he was not at fault in the accident. (CFR #5-a)

10. The Applicant is currently employed by Tuskegee Enterprises, LLC. (CFR #5-f).

DISCUSSION

Maryland law governing mortgage loan originator licensing currently provides at Md. Code Ann., Fin. Inst. § 11-605(a) (Supp. 2009) as follows:

(a) *Required findings.* - The Commissioner may not issue a mortgage loan originator license unless the Commissioner makes, at a minimum, the following findings:

(1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction;

(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:

(i) During the 7-year period immediately preceding the date of the application for licensing; or

(ii) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering;

(3) The applicant has demonstrated financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently;

- (4) The applicant has completed the prelicensing education requirement under §11-606 of this subtitle and any prelicensing education requirements established by the Commissioner by regulation;
- (5) The applicant has passed a test that meets the requirements established under §11-606.1 of this subtitle and any prelicensing testing requirements established by the Commissioner by regulation; and
- (6) The applicant has met the surety bond requirement under §11-619 of this subtitle.

This current version of the law was passed on July 1, 2009, after the Applicant applied for his license. The Applicant argued that the law in effect when he applied for a license, on June 12, 2009, is applicable in this case. That law provides that an applicant must be of good moral character and possess the general fitness to warrant the belief that he or she will act as a mortgage originator in a lawful, honest, fair, and efficient manner. Md. Code Ann., Fin. Inst. § 11-605(a)(2) (Supp. 2008). Additionally, the Commissioner may deny an application if the applicant has committed any act that would be grounds for suspension or revocation of a license. Md. Code Ann., Fin. Inst. § 11-605(b). In turn, the Commissioner may suspend or revoke a license if the individual has been convicted of a felony or otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitable, and efficiently. Md. Code Ann., Fin. Inst. § 11-517(a)(2)(i) and (5) (Supp. 2008).

Because the CFR cited the prior law in its decision denying the Applicant's application, (CFR #4), I will apply that statute in this decision. My decision, however, would not be different whether I applied the prior or current law because under either provision, the Applicant's criminal and financial history warrants denial of a mortgage originator's license.

The Applicant does not dispute his record. Instead, he contends that he has changed and has worked hard to become an honest, trustworthy person. He cites the Second Chance Act of 2007 to support his contention that the 1987 felony conviction should not disqualify him from receiving a mortgage originator's license. He also noted that he will be working for Tuskegee Enterprises processing federal Housing and Urban Development (HUD) loans. Under federal law, there are many safeguards in place that would protect his customers.

The Applicant further explained that the March 23, 2009 judgment for Nationwide arose as the result of an automobile accident. He was driving an employer's vehicle when a car hit him in the rear passenger side of the car. He testified that he was not at fault, and therefore he is not obligated to pay the judgment. On cross-examination, the Applicant stated that he received notice of the judgment which he appealed, but his appeal was denied. He is still calling Nationwide in an attempt to resolve the matter by compromise. With regard to the May 24, 2007 judgment for LVNV Funding, LLC, the Applicant stated that he did not know why there was that judgment against him except that the Bank of America had resold his debt and it was a fraudulent charge.

The Appellant's felony conviction in 1987 was for a crime of moral turpitude. Crimes of moral turpitude include treason, felony, perjury, and forgery. Historically, perpetrators of such crimes were precluded from testifying in judicial proceedings because the crimes impressed on the perpetrators such a moral taint that to permit them to testify would injuriously affect the public administration of justice. *Stidwell v. Md. State Bd. of Chiropractic Examiners*, 144 Md. App. 613, 617 (2002). In administrative licensing proceedings, crimes of moral turpitude have a more expansive definition and include crimes that would undermine public confidence in the

administration of government should the perpetrator be licensed. *State Bd. of Physicians v. Rudman*, 185 Md. App. 1, 21-22 (2009).

I have considered that the Applicant was convicted of felony theft in 1987, twenty-two years ago. Nonetheless, the theft was a serious crime perpetrated in a business setting, it occurred over time, and it involved a large sum of money. The Applicant stated that he worked configuring computers and routinely carried boxes out of the building where he worked. Thus, he was also able to carry out boxes containing computers he would keep without arousing suspicion. The gravity of the Applicant's crime is reflected in the sentence the court imposed, a three-year suspended sentence, seven years supervised probation and restitution.

In addition to the felony itself, the Applicant failed to abide by the terms of probation. He was found guilty of violating probation in 1989 and 1992, but continued on probation. In 1994, he was again charged with violating probation, but failed to appear for the violation hearing. As a result, the court issued a warrant for the Applicant's arrest, which was not served until 1999. He was then convicted of violating probation and the three-year sentence was imposed. The Applicant served eighteen months on work release. At the hearing, the Applicant failed to explain in any detail the reasons for the violations except to testify that he was unable to make restitution. The Applicant's inability to meet his financial obligations over many years, as well as his failure to appear on a violation of probation charge until served with a warrant in 1999, demonstrates that he lacks the responsibility and fitness to operate a business efficiently.

Additionally, there is some evidence that the Applicant had stolen from his employer before 1987. He stated in his letter to CFR on June 12, 2009 that he had been convicted of theft of his employer, General Foods Corporation, in 1979 or 1980. (CFR #5-c). At the hearing, he testified that the theft resulted in a misdemeanor conviction; then he said he was not convicted,

but terminated. Then he denied any wrongdoing and stated that the accounts payable department cashed checks for an individual his employer believed he knew. Although the incident may have occurred twenty-nine to thirty years ago, I would expect if a person were convicted of a crime, he or she would remember. The Applicant's varying reports about the incident and criminal charges, if any, casts doubt on his credibility.

The Applicant's felony conviction and failure to complete probation until he was required to serve a term of imprisonment demonstrates that he lacks the financial responsibility, character, and general fitness to conduct business in an efficient manner. Considering the circumstances of the crime and probation, I find that public confidence in the administration of government would be undermined should the State license the Applicant as a mortgage originator.

With regard to the Applicant's financial history, the Applicant testified that he did not know what the 2007 judgment for LVNU Funding, LLC, was about, except to say that the Bank of America fraudulently charged him. He stated that he did not receive notice to appear for the case. I believe the Applicant knew or, as a person who is entering a financial profession, should have known about the debt and judgment. His failure to satisfy the judgment, now over two years old, demonstrates that the Applicant lacks the general fitness to warrant the belief that he will act as a mortgage originator in a lawful, honest, fair, and efficient manner.

Finally, the Applicant also failed to pay a 2009 judgment in favor of Nationwide. Although he may have disagreed with the finding of the court, he knew the judgment was final, and, as a prospective financial professional, knew or should have know that he was legally obligated to pay the dept. The Applicant's failure to manage his debts and pay the judgment against him, demonstrates that he lacks the general fitness to warrant the belief that he will act as a mortgage originator in a lawful, honest, fair, and efficient manner.

The Applicant cites the Second Chance Act of 2007, to argue that his 1987 conviction should not bar him for being licensed. That law is designed to prevent recidivism by ensuring the safe and successful return of prisoners to the community. It provides grants to governments and organizations for education, job training, and substance abuse rehabilitation programs. 42 U.S.C.A. § 17511. Also, Wardell Wilson, the Applicant's employer, argued that the mortgage originator's licensing law is an egregious and reckless miscarriage of justice. It sets a bar higher for applicants than for politicians, who, Mr. Wilson implied, can serve even if they are convicted felons. He further noted that the Maryland and federal governments are in debt and are fiscally irresponsible, and therefore, there is no correlation between credit worthiness and licensing. He maintained that the mortgage originator licensing law is based on classism and racism, and that it only protects the consumer without any regard to the government's duty toward businesses and other citizens.

I have considered that the Applicant has worked hard to change his life since he was imprisoned in 1999. His pastors and his employer speak highly of him. I have also considered the Applicant's arguments that he deserves a second chance and that the law is harsh as applied to him. The CFR, however, is required to administer the law as enacted by the legislature. Additionally, the CFR should not have to rely on HUD safeguards to protect a mortgage originator's customers. Based on the Applicant's felony conviction, his repeated failure to comply with the terms of his probation, and two recent unsatisfied judgments against him, I find that the law has not been unfairly applied to the Applicant. He has failed to prove that he is financially competent and that he possesses the general fitness to warrant the belief that he will act as a mortgage originator in lawful, honest, fair, and efficient manner.

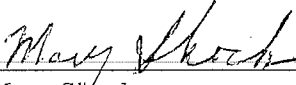
CONCLUSIONS OF LAW

I conclude as a matter of law that the CFR properly denied the Applicant's application for a mortgage originator's license. Md. Code Ann., Fin. Inst. § 11-605(a).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Commissioner of Financial Regulation deny the Applicant's application for a mortgage originator's license.

December 8, 2009
Date Decision Mailed



Mary Stock
Administrative Law Judge

MKS/gr
#109851